Supreme Court, U. S.
FILED
MAR 19 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1466

FRANK BLACKBURN, WARDEN,
LOUISIANA STATE PENITENTIARY,
Petitioner,

versus

ARTHUR J. MONROE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WILLIAM J. GUSTE, JR.,
ATTORNEY GENERAL OF
LOUISIANA

HARRY F. CONNICK,
DISTRICT ATTORNEY FOR
THE PARISH OF ORLEANS

BRIAN G. MEISSNER,
ASSISTANT DISTRICT ATTORNEY
FOR THE PARISH OF ORLEANS

2700 Tulane Avenue
New Orleans, Louisiana 70119
Telephone: (504) 822-2414

SCOFIELDS' QUALITY PRINTERS, P. O. BOX 53096, N. O., LA. 70153 - 504/822-1611

INDEX

Page

OPINION BELOW 2

JURISDICTION 3

QUESTIONS PRESENTED 4

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED 4

STATEMENT OF THE CASE 5

ARGUMENT 9

CONCLUSION 20

CERTIFICATE 21

APPENDIX

I. *Monroe v. Blackburn,* U.S.D.C., Eastern District of La., 76-2631 ..... 1a

II. *Monroe v. Blackburn,* 607 F.2d 148 (5th Cir. 1979) 21a

III. *Monroe v. Blackburn,* Rehearing Denied (5th Cir. 1979) 32a

IV. *Monroe v. Blackburn,* Stay of Mandate (5th Cir.) 34a

V. *Monroe v. Blackburn,* Stay of Mandate (5th Cir.) 37a

INDEX (Continued)

Page

VI. *State v. Monroe,*
Victim's Statement and
Police Report 39a

VII. *State v. Monroe,*
Police Report 42a

CITATIONS

CASES:

BRADY v. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) 4,6,7, 9,10,13

GARRISON v. MAGGIO, 540 F.2d 1271 (5th Cir. 1976), cert. denied 431 U.S. 940 19

MONROE v. BLACKBURN, 607 F.2d 148 (5th Cir. 1979) 2,3,12

MOORE v. ILLINOIS, 408 U.S. 786, 33 L.Ed.2d 706, 92 S.Ct. 2562 (1971) 19

STATE OF LOUISIANA v. MONROE, 342 So.2d 1108 (1977) 2

STATE v. THARP, 284 So.2d 536 (La. 1973) 10

UNITED STATES v. AGURS, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976) 13,19

UNITED STATES v. ANDERSON, 574 F.2d 1347, 1353 (5th Cir. 1978) 9

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No.

FRANK BLACKBURN, Warden,
Louisiana State Penitentiary,
Petitioner,

versus

ARTHUR J. MONROE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner herein, Frank Blackburn, Warden, Louisiana State Penitentiary, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on November 21, 1979.

OPINIONS BELOW

Respondent, Arthur Monroe is currently serving a 20-year sentence in the Louisiana State Penitentiary, Angola, Louisiana, imposed on August 13, 1974, as a result of his conviction by a jury for armed robbery on April 26, 1974. A direct appeal taken from the final judgment and sentence resulted in an affirmance by the Louisiana Supreme Court on March 29, 1976 (329 So.2d 193 (La. 1976)).

As to the present issue, respondent filed a writ of habeas corpus with the State trial court. After a full evidentiary hearing, this petition was denied on December 13, 1976. On March 9, 1977, the Louisiana Supreme Court affirmed the trial court's opinion, stating in per curiam, "The ruling of the trial judge denying the habeas corpus petition is correct." *State of Louisiana v. Monroe,* 342 So.2d 1108 (La. 1977).

Having exhausted State remedies, respondent then filed for a writ of habeas corpus in the United States District Court for the Eastern District of Louisiana. The case was referred to Magistrate Kenneth Hughes, pursuant to 28 U.S.C. 636 for a Recommendation and Report. The Magistrate recommended that the application for federal habeas corpus relief be denied. Over the written objections of respondent, the United States District Court, Judge Frederick Heebe, presiding, denied respondent relief. See *Monroe v. Blackburn,* United

States District Court, Eastern District of Louisiana, No. 76-2631. Attached as Appendix I.

Monroe noticed on appeal and the district judge certified that there was probable cause for the appeal.

After briefs were submitted and oral argument presented, the United States Court of Appeals for the Fifth Circuit, in a 2-1 decision (Judges Hill and Tjoflat, concurring, Judge Coleman, dissenting), reversed the lower court's decision and remanded the case for retrial. See *Monroe v. Blackburn,* 607 F.2d 148 (5th Cir. 1979). Attached as Appendix II.

Petitioner requested and received a one-week extension of time, until December 12, 1979, in which to file a Petition For Rehearing and Petition For Rehearing En Banc. Such rehearings were denied on January 16, 1980 (see Appendix III.) A Stay of Mandate was granted until March 5, 1980 (see Appendix IV.) Petitioner filed a brief with the U.S. Supreme Court on March 3, 1980. Due to improper form, the brief was returned for re-filing. A Stay of Mandate was granted until March 19, 1980. (See Appendix IV A.)

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on November 21, 1979. A timely petition for rehearing and rehearing en banc was de-

nied January 16, 1980. A Stay of Mandate was requested and granted by the United States Court of Appeals for the Fifth Circuit to and including March 19, 1980, the stay to continue in force until the final disposition of the case by the Supreme Court. See Appendix V, VI A. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code 1254(1) and Rule 19(1) of the Rules of this Honorable Court.

QUESTION PRESENTED

WHETHER THE PROSECUTOR'S FAILURE TO REVEAL THE VICTIM'S NON-EXCULPATORY PRETRIAL STATEMENT (WHICH ESSENTIALLY CORROBORATED ALL OF THE VICTIM'S IN-COURT TESTIMONY EXCEPT FOR REFERENCE TO A "NOISE") DENIED RESPONDENT A FAIR TRIAL OR AFFECTED THE OUTCOME OF THE CASE. See *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The nature, scope, and effect of a *Brady* request. See *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

STATEMENT OF THE CASE

On March 14, 1974, in the early afternoon, Doty Marisco, a laundry route salesman, was robbed at gunpoint of his wallet and $8.00 or so in change. The victim did not see the face of the robber, nor could he identify him. He did, however, see the back of the robber and noted his physical appearance and the fact that the robber was wearing a red, white, and blue plaid shirt. He immediately reported the robbery to the police.

A short time later, approximately 2 blocks from the scene of the robbery, a police officer saw the respondent Monroe, who matched the physical description given and who was wearing a shirt similar to the one described by the victim. The petitioner was on the sidewalk talking to another man.

The officer approached the respondent to interrogate him. The officer observed an expression of shock and surprise on the face of respondent, who started to walk away. When the officer ordered respondent to stop, the respondent commenced running away.

After a chase, Monroe was caught. A pistol was taken from him and identified by the victim as similar to the one used in the armed robbery. Respondent's shirt was confiscated and was identified as similar to the one worn in the armed robbery. Respondent's physical appearance was also identified as "very similar" to the robber.

A fingerprint of the respondent was lifted *at the scene of the crime* by an investigating officer, from the "*inside* of the handle of the driver's side." (Emphasis added). Tr. pp. 40, 46.

The supplemental police report clearly notes that:

> ". . . *at the time of the offense,* Crime Lab Tech Daniel O'Neil was summoned to the scene to obtain fingerprints, if possible, from the vehicle in which the victim was riding at the time of the armed robbery. Tech. O'Neil took several samples from the vehicle's front door to be checked at the crime lab office."

The officer testified in court that he dusted for prints "on the driver's side of the Chalmette laundry truck and the door handle itself." He arrived on the scene at 4 p.m. to "conduct a search for fingerprints."

A written statement was taken from the victim at 5 p.m. the day of the robbery. (This statement is attached to this Petition as Appendix VI. The police report is attached as Appendix VII.)

At trial, counsel for the respondent requested the statement of the victim. (As argued in brief, this request was made pursuant to a State law of discovery rather than under the federal law as enunciated in *Brady.*) Because counsel had not laid the foundation for

production of the statement under State law, the request was denied. Respondent now claims that this refusal of the prosecutor to disclose the statement violated due process as enunciated in *Brady v. Maryland,* supra.

Respondent argues that if the victim's statement had been produced at trial, he could have argued that the State "improved" (*i.e.,* engineered) the in-court testimony of the victim. That is, the statement makes no reference to "a noise at the door," to which the victim testified.

No evidence was presented by the respondent at the State evidentiary hearing that the evidence was "improved." In fact, the only testimony by the District Attorney who handled the case, regarding the pretrial interview of the victim denied such "improvement."

The respondent at trial testified that he never touched the truck. Note the following emphasized testimony of the respondent at trial.

> Q You said you seen a truck like this?
> A Yes.
> Q *On the day you were arrested, did you go in that truck?*
> A *No.*
> Q *Did you touch the truck like that?*
> A *No, not to my knowledge. I was close to it.*
> Q *You didn't touch it?*
> A *No.*

Q Prior to that date, in the week before or two weeks before, did ever (sic) go in the truck like that?

A No.

Q *You never opened the left side of the door and go in a truck like that?*

A *That's right. No.*

Q When you brought (sic) back to the scene, the man said you didn't rob him, he said that was not the man?

A He said I was not the man.

Q *You have never touched a door of that truck or a truck like that?*

A *No.*

Q *Never?*

A *I have never touched a truck like that. I have worked on trucks like that.*

Q *In the Chalmette Laundry?*

A *I have never touched.*

Q Have you ever delivered for the Chalmette Laundry in a truck?

A No.

Q You never worked with that man that was up here?

A No.

Q You have never been in that truck, that is what you are saying?

A Yes.

BY MR. CAPITELLI:

No further questions.

BY MR. McKEE:

I have one or two more questions.

REDIRECT-EXAMINATION

EXAMINATION BY MR. McKEE:

Q *You previously testified to my recollection that the only occasion that you went near the truck was when you was arrested and charged with arm (sic) robbery.*

A *I went near it, I didn't touch it.*

ARGUMENT

This Honorable Court has identified three types of cases to which *Brady* applies:

> "(1) The prosecutor has not disclosed information despite a specific defense request; (2) the prosecutor has not disclosed information despite a general defense request for all exculpatory information or without any defense request at all; (3) the prosecutor knows or should know that the conviction is based on false evidence. *United States v. Anderson*, 574 F.2d 1347, 1353 (5th Cir. 1978)."

The United States Court of Appeals for the Fifth Circuit, in its opinion, held that this case involved a "specific defense request," under category one. The petitioner initially suggests that there was no "Brady" request.

The petitioner in this case, contrary to the opinion of the Fifth Circuit Court of Appeals, did not argue there was not a specific request for the statement. What the petitioner did argue was there was not a specific request under the federal law of *Brady* for the statement. Rather, the request was made (and denied) pursuant to State grounds. The explanation for this distinction lies in Louisiana law. The following excerpt from the Loyola University of the South Law Review of 1974 (Vol. 20, p. 214) concerning then "recent cases" explains the State's position:

> "At trial, a police officer admitted on cross-examination that he had referred to a police report on direct examination in order to recall the date of the defendant's alleged distribution of a contraband drug. The defense counsel's request to see the police report was denied. On appeal from conviction, the Supreme Court of Louisiana reversed and *held* that the trial court, to prevent undue or false suggestions to the witness, must determine if he is refreshing his memory, or relying solely on the report to testify. If the court finds that the witness is testifying from present memory refreshed, the defendant has a right to examine the report or the memo. *State v. Tharp*, 284 So.2d 536 (La. 1973).
>
> "The ability to refresh a witness' memory plays a significant role at trial. It has also been

> one of the most difficult evidentiary concepts to grasp. This stems from a tendency to confuse the refreshment of a witness' memory with 'past recollection recorded.' 'Past recollection recorded' concerns a written statement which the witness cannot recall at the time of trial. If the witness can swear that the record of the statement was accurate at the time it was made, the writing may be read into evidence, and in some instances the writing itself may be received as evidence. While 'past recollection recorded' is an exception to the hearsay rule, 'present recollection revived' is merely a trial tactic used to jog a witness' memory. A 1967 Louisiana statute permits a witness who can testify from his present memory the opportunity to refresh his recollection by referring to his prior court testimony or to memoranda.
>
> "Counsel may show the witness, while testifying, a physical object, report, or memorandum and ask the witness if the object or writing refreshes his memory. If it does refresh his memory, the witness himself will be allowed to testify and the writing will not be read or introduced into evidence.
>
> "The Louisiana court has limited the opposing counsel's right to view such docu-

ments. A proper foundation for impeachment must be established before the state is required to produce the memoranda used by its witnesses. This procedure was clearly outlined in *State v. Nails*, 234 So.2d 184 (La. 1970).

> 'The jurisprudence is well stated that the state is not required to permit the inspection of any of its evidence in a pending criminal prosecution, which would include police reports, the exception being a written confession of the accused, and at the time of the trial a defendant is not entitled to the production of a prior written statement of a witness unless the proper foundation has been laid for impeachment, the witness denying making the statement, or defense counsel showing that the report indicates that one or more of the material statements therein are contrary to the sworn testimony.' "
> (Emphasis theirs).

It is clear from reading the transcript of the trial that counsel for the respondent was attempting to obtain the statement under the above theory of "present memory refreshed." See Footnote 4, *Monroe v. Blackburn*, 607 F.2d 148. To do so, he had to lay the proper foundation. He did not lay such a foundation, and, accordingly, the trial court denied the request to view the statement.

Most significantly, the request was not a *Brady* request. Trial counsel did not, it is emphasized, request the statement as "Brady material," or as exculpatory information.

The distinction is not just a legal technicality. When the respondent requested the statement under the above State theory, it was necessary that he lay a foundation. When he failed to lay the required foundation, the trial court properly denied the request. If respondent had requested the statement as *Brady* material, the trial judge could have considered the federal law applicable to *Brady* requests rather than the State law applicable to "present memory refreshed" requests.

The import of the above distinction is that there was *no Brady* request (*i.e.*, a request based upon federal grounds) for the statement. Petitioner thus suggests that *Brady* does not even apply to this case.

If *Brady* should apply, as the Fifth Circuit panel held, then the appropriate test of materiality is whether "the suppressed evidence might have affected the outcome of the trial." *United States v. Agurs*, 427 U.S. 97, 104, 96 S.Ct. 2392, 2398, 49 L.Ed.2d 342 (1976).

The United States Fifth Circuit concluded that: "Marisco's statement . . . is impeachment evidence of the sort that goes directly to a substantive issue and could be used in urging that the in-court testimony has

been 'improved' by the erroneous addition of what the prosecution needed to support its theory."

Petitioner respectfully submits that this conclusion is erroneous. First, there has been *no* evidence by respondent that the in-court testimony was improved and/or engineered and/or suggested by the State.

The District Attorney testified that he did not engineer or suggest testimony to account for the fingerprint. He testified as follows:

BY MR. GLASS:

And do you recall asking him, or actually telling him that fingerprints were located on the door of the truck?

BY MR. CAPITELLI:

No. The way, I positively wouldn't conduct an investigation that way. The way I do it and it's been a practice of mine in every case is I ask the person first to tell me the entire story.

BY MR. GLASS:

And since you were interested in how the fingerprints might have gotten on the door of the truck, did you question Mr. Marisco about sequence of events prior to stepping out of the truck, closely?

BY MR. CAPITELLI:

I asked Mr. Marisco, please, tell me exactly

what happened, and then I take notes and he went into detail. He went into the detail and certainly the fact that he heard the door handle move. He looked in that direction then he turned back and stepped from the truck. The man was there. That was pertinent to the trial. It was also pertinent to the fact that that door was locked and that window was locked, so obviously the robber couldn't have gotten in that door, which is the first point I felt, the way he tried to gain excess (sic) to the truck. That was part of his initial description to me in detail what happened in the case.

The key evidence which proves beyond any doubt that the in-court testimony of the victim was not "improved" (evidence which was not even mentioned in the opinion of the Fifth Circuit Court of Appeals) is that of the fingerprint technician, Officer Daniel O'Neil. Officer O'Neil testified that at 4 p.m. on the day of the robbery (one hour *before* the statement was taken) he dusted for fingerprints *only* on the door on the left side of the truck.

EXAMINATION BY MR. CAPITELLI:

Q You said that you dusted for prints, what area did you dust for prints in this case?

BY OFFICER O'NEIL:

A Yes, the door on the driver's side of the Chalmette Laundry truck and the door handle itself. (Tr. 40).

The supplemental police report clearly notes that: (see attached report, Appendix VII).

> *"at the time of offense,* Crime Lab Tech. Daniel O'Neil was summoned to the scene to obtain fingerprints, if possible from the vehicle in which the victim was riding at the time of the armed robbery. Tech. O'Neil took several samples from the vehicle's front door to be checked at the crime lab office."

The officer testified in court that he dusted for prints "on the driver's side of the Chalmette laundry truck and the door handle itself." Finally, and most importantly, Detective O'Neil arrived on the scene at 4 p.m. to "conduct a search for fingerprints." (This compares with the statement in issue which was taken at 5 p.m.) The point is clearly made that the police had to have some reason to take fingerprints at that time (prior to the written statement). The only conclusion must be that the police had been told by Mr. Marisco, as he testified in court, that the robber had touched the latch. This is summarized by the District Attorney's testimony at the State hearing on this Writ:

MR. CAPITELLI:

> It is obvious from reading the report that they called the Crime Lab man to the scene. He arrived at the scene, and in my experience in handling armed robberies for over a year and a

> half and in being charge (sic) of screening now since then, there is no way they ever called a Crime Lab man to the scene . . . on a robbery case, especially to dust a truck, unless they had information at the time that there was somebody who had touched the truck or they felt, you know, the robber had touched the truck, or they wouldn't have brought the Crime Lab man out there. My experience with understaff (sic) Crime Lab we have, there is no way they would call him to the scene. . . .

The above evidence clearly indicates that not only did the events themselves occur, *i.e.*, that the robber placed his hand on the latch, but also show that the officers were informed of this fact at the time of the investigation (even prior to the taking of the signed statement).

The evidence is overwhelming and conclusive beyond all doubt that the prosecutor did not "improve" the testimony of the victim.

However, conceding the "improved testimony," this evidence in the statement could not affect the outcome of the trial. Consider if at trial the victim had not testified that he heard a noise on the latch prior to the robbery. The fingerprint would still have been present. Respondent would still have had to explain the presence of the print. Most importantly, respondent testified repeatedly that he *never* touched the truck. The

only conclusion that jury could have reached is that the respondent, who perfectly matched the description of the robber, and who had a gun, was, in fact, the robber. (This is not a startling conclusion. For example, if a burglary occurs that no one sees, but the fingerprint of a defendant is found at the point of entry, the guilt of the defendant, barring his reasonable explanation of the fingerprint, has been proven beyond a reasonable doubt.)

Respondent argues that in the present case he could have argued that the evidence was "improved." This argument, however, does not *erase* the fingerprint. Nor does it explain the fingerprint. (It must be emphasized that petitioner testified he *never* touched the truck.) As Justice Coleman held in his dissent:

> "The presence of the fingerprint on the inside of the door handle, when the defendant disclaimed touching the truck at any time, far outweighs any possible prejudicial effect stemming from whether the prosecuting witness did or did not hear a noise before being accosted. Witnesses may be mistaken, they may deliberately lie, about their recollections of such fleeting matters as hearing a noise or overhearing a few words of a conversation. Physical facts do not lie. In this case the fingerprint was there and there was not the slightest suggestion that it might have gotten there at some other time or place and in an innocent fashion."

This Court noted in *Moore v. Illinois*, 408 U.S. 786, 33 L.Ed.2d 706, 92 S.Ct. 2562, that there is

> ". . . no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on the case."

The ultimate issue is whether the prosecutor's omission is of significant import to result in a denial of the defendant's right to a fair trial. *United States v. Agurs*, supra, at 13, 96 S.Ct. 2392. See also *Garrison v. Maggio*, 540 F.2d 1271 (5th Cir. 1976), cert. denied 431 U.S. 940.

The respondent in this case received a fair trial. At the trial respondent called character witnesses and testified himself. Certainly all of the State's evidence and the fingerprint (unexplainable by the respondent) prove beyond a reasonable doubt that respondent committed this crime. The jury did not believe respondent or his witnesses. His claim for relief now is not supported by the evidence presented.

This case is in direct conflict with *Moore*, *Agurs* and *Garrison*, supra. Most importantly, it places upon a prosecutor the unreasonable burden of searching the statements of witnesses to find what details are missing. Given the fact that any statement is likely not to contain all the remembered details of a crime, the prosecutor's only alternative is to disclose all statements.

Certainly this is not constitutionally required. Certainly, in the instant case, the failure to disclose the statement (which essentially corroborated all of the victim's in-court testimony), did not deny respondent a fair trial or affect the outcome of the case. The overwhelming evidence proves, beyond a reasonable doubt, that the respondent committed the armed robbery — the same physical appearance, the gun, the shirt, his proximity to the crime, the flight of the respondent, his incredulous story, and his fingerprint. The State can and did explain the fingerprint. The respondent could not and cannot.

The pretrial statement does not contradict the trial testimony of the robbery victim. Moreover, when viewed within the context of the full trial, the insignificance of the statement is apparent. The robbery victim identified the gun found on respondent, the shirt worn by him and his physical appearance as being similar to the robber. Respondent's fingerprints were lifted from the inside of the handle on the driver's side of the truck. The statement is not sufficiently material to have warranted its disclosure.

CONCLUSION

For the foregoing reasons, petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Fifth Circuit Court of Appeals. Petitioner further prays that, following the issuance of

said Writ, the judgment of the District Court denying Monroe's petition for habeas corpus be affirmed.

WILLIAM J. GUSTE, JR.,
Attorney General of Louisiana

HARRY F. CONNICK,
District Attorney for the
Parish of Orleans

BRIAN G. MEISSNER,
Assistant District Attorney
for the Parish of Orleans

BRIAN G. MEISSNER
2700 Tulane Avenue
New Orleans, Louisiana 70119
Telephone: (504) 822-2414

CERTIFICATE

I certify that three copies of this Petition For Writ Of Certiorari have been served on respondent by placing same in the United States Mail, postage prepaid, addressed to Robert Glass, Esq., 338 Lafayette Street, New Orleans, Louisiana 70130, attorney for respondent.

BRIAN G. MEISSNER

New Orleans, Louisiana, this ____ day of March, 1980.

APPENDIX I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARTHUR J. MONROE,
Petitioner,

versus CA No. 76-2631
Section C

ROSS MAGGIO, JR., Acting Warden
LOUISIANA STATE PENITENTIARY,
Respondent.

REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE

This matter has been referred to me as United States Magistrate for review and recommendation on application for Writ of Habeas Corpus under 28 U.S.C. 2254. ARTHUR J. MONROE is presently incarcerated in the Louisiana State Penitentiary at Angola, Louisiana, having been sentenced on August 13, 1974, to serve twenty years for the crime of armed robbery. The Louisiana State Supreme Court originally re-

versed and remanded, but on rehearing affirmed the conviction. *State v. Monroe,* 329 So.2d 193 (1976).

Petitioner originally filed a petition for a Writ of Habeas Corpus reurging all those errors urged in the original review by the State Supreme Court. He has exhausted his state remedies insofar as these issues are concerned and is properly before this Court.

The first two bills taken in state court refer to voir dire questioning. The third bill attempts to make a note of evidence that the State excluded only black jurors. The fourth, fifth, sixth, seventh and eighth bills refer to matters which arose during the trial as evidence.

Petitioner thereafter brought a supplemental petition for a Writ of Habeas Corpus asserting a denial of federal due process under the decisions of *Brady v. Maryland,* 373 U.S. 83 (1963) and *United States v. Agurs,* 96 S.Ct. 2392 (1976).

The supplemental petition was denied by the state trial court on December 13, 1976, after an evidentiary hearing. On March 9, 1977, the Louisiana Supreme Court affirmed the trial court's opinion. *State of Louisiana v. Monroe,* 342 So.2d 1108 (1977). Petitioner has exhausted his state remedies insofar as this supplemental issue is concerned and is properly before this Court.

I

Bills of Exceptions Nos. 1 and 2 relate to a curtailment of voir dire examination of prospective jurors by the defense. The trial judge disallowed the following two questions proposed by defense counsel concerning the presumption of innocence:

> "Does it present any problems to you or do you have difficulty in accepting the fact that it is better to see a crime go unpunished than to find the wrong man guilty? Can you accept that?"
>
> "If the State should fail to prove who did, in fact commit the crime and you are satisfied that we didn't, could you find him not guilty?"

A review of the record indicates that defense counsel questioned prospective jurors at length regarding their acceptance and understanding of the presumption of innocence and the burden of the State to prove each element of the crime charged beyond a reasonable doubt. The two questions which were disallowed were repetitious and the second question was also confusing.

In interpreting its Constitution, procedural statute and case law, the Louisiana Supreme Court held defendant was afforded sufficient latitude in his ques-

tioning of prospective jurors on voir dire. Moreover, to the extent that MONROE's argument of improper curtailment of the voir dire examination is founded upon the Louisiana Constitution and the Louisiana Code of Criminal Procedure, he does not present an issue of constitutional dimensions cognizable in federal habeas corpus. 28 U.S.C. §2254(a).

Federal due process demands that the accused be presumed innocent until proven otherwise and that the guilt of the accused be established by the government beyond a reasonable doubt. This Court finds that the defense was given sufficient latitude during the voir dire examination to probe jurors' attitudes towards these rights. With regard to MONROE's federal due process right to a competent and impartial tribunal, the record reveals that prospective jurors were sufficiently examined to ensure impartiality and uncover predispositions of attitude.

II

In Bill of Exception No. 3, petitioner's legal counsel attempted to make a note of evidence that allegedly reflected that all jurors excused by the State up to that point had been black and had given answers similar to those given by all of the other prospective jurors.

The State Supreme Court noted:

> "In the case of *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965), the

> United States Supreme Court held that a prosecutor's striking of all blacks from a jury venire in a particular case does not constitute a denial of equal protection of the laws. However, the Court held that if a defendant could establish that a prosecutor unfairly exercised his peremptory challenges so as to exclude blacks from serving on juries over a period of time, a fourteenth amendment violation would have been proved. In order to properly pose the issue, however, the defendant must show on the record the prosecutor's systematic use of peremptory challenges to exclude blacks over a period of time, a showing this defendant had not made. It was evidently to meet this *Swain* test that this defense counsel attempted to make his note of evidence so that he could later establish systematic exclusion of blacks in a subsequent case, presumably involving a different defendant and a different crime but the same prosecutor."

This is an accurate interpretation of *Swain*. The State Supreme Court continued:

> ". . . Even had the note of evidence been made the defendant could not have proved, under the *Swain* test, that he was the victim of discriminatory use of peremptory challenges. To do that, he would have had to develop an

> independent record of prior systematic exclusion which he could then have offered into evidence at his trial."

Since no record of prior systematic exclusion was supplied at the trial level or on appeal, this Court finds that petitioner has not demonstrated a deprivation of a constitutional right.

III

Bills of Exception Nos. 4, 5, 6 and 7 are attempts by defense counsel to secure a police report which reflected a pretrial statement by the robbery victim to police on the day of the robbery. The trial court disallowed its production. These Bills of Exception are state evidentiary rulings, and as such, as not cognizable in this Court on a habeas corpus petition. As was said in this Circuit in *Redd v. Decker,* 447 F.2d 1346, 1347 (5th Cir. 1971):

> "This Court is here considering a collateral attack upon a state court conviction, not a direct appeal. Only errors reaching constitutional dimensions can thus be considered. All these evidentiary matters were raised at appellant's trial and upon appeal received fair consideration on the basis of existing applicable legal standards. Appellant has failed to establish by these contentions a violation of federal constitutional rights of such magnitude as to entitle him to a new trial."

These issues were properly disposed of by the State Supreme Court and are not reviewable by this Court. See also *Gephart v. Beto,* 441 F.2d 319 (5th Cir. 1971); *Reese v. Cardwell,* 410 F.2d 1125 (6th Cir. 1969); *Williams v. Wainwright,* 427 F.2d 921 (5th Cir. 1970).

IV

Bill of Exception No. 8 is the defendant's objection to the introduction into evidence of the photograph of defendant's fingerprint taken from the victim's delivery truck. Defendant argues that the evidence was improperly introduced because a proper foundation had not been laid. This is another state evidentiary ruling which does not reach constitutional proportions. *Redd v. Decker, supra.* Petitioner refers to *Davis v. Mississippi,* 394 U.S. 721, 89 S.Ct. 1394 (1969), which he feels is relevant to this matter. The issue before the Supreme Court in *Davis* was whether fingerprints obtained should have been excluded from evidence as the product of an illegal detention. Clearly, *Davis* does not apply in this instance.

V

Finally, petitioner asserts that the prosecution's failure to allow him to view a pretrial statement given to police by the robbery victim which was material to the defense and tended to exculpate petitioner constitutes a denial of federal due process. *Brady v. Maryland, supra; United States v. Agurs, supra.*

In testifying about the robbery at the trial, the victim stated that he heard a noise by the left-hand door of his truck and noticed that the door latch was down. The pretrial statement makes no mention of a noise or the door latch being down. The pretrial statement reads, in pertinent part, as follows:

> "At about 3:15, this date, I had stopped my truck in the 2300 blk. of S. Galvez St. to make a laundry pickup at the Santa Monica School. As I started to get out of my truck, I had one foot on the ground, and I was looking down where I was stepping, when I heard a man say, 'I want your money.' "

Petitioner claims that if he had the statement, he could have argued as follows:

> "The statement taken on March 14, 1974 was the most contemporaneous, and therefore the most reliable, accounting of the event. Because Mr. Marisco did not mention the noise and the robber's hand on the latch, these events most likely did not occur, since Mr. Marisco had no reason to keep this information from the police, nor would any reasonably cooperative victim omit them as important. Therefore, the trial testimony was possibly engineered or suggested in order to account for the fingerprint, and thereby tie it to

> the robber, and the robber to the petitioner. The testimony of petitioner that he was placed close or near to the truck after his arrest, but did not touch it, is presumably explainable as the product of a lapse of petitioner's memory due to the excitement engendered by a wrongful arrest and accusation."

The state trial court held an evidentiary hearing on December 13, 1976. The record of the state court evidentiary hearing has been reviewed in its entirety and found to be exhaustive of evidence that could be adduced at such a hearing.

At the hearing, the following testimony was elicited from the District Attorney regarding the police report:

"MR. CAPITELLI:

> It's obvious from reading the report that they called the Crime Lab man to the scene. He arrived at the scene, and in my experience in handling armed robberies for over a year and a half and in being charge (sic) of screening now since then, there is no way they ever called a Crime Lab man to the scene . . . on a robbery case, especially to dust a truck, unless they had information at the time that there was somebody who had touched the truck or they felt, you know, the robber had touched the truck, or they wouldn't have

> brought the Crime Lab man out there. My experience with understaff (sic) crime lab we have, there is no way they would call him to the scene . . ."

The police report indicates that the search for fingerprints was conducted at 4:00 P.M. on the day of the robbery, approximately one hour before the victim's pretrial statement was given to police. The conclusion is inescapable that police were told by the victim that the robber had touched the inside of the latch.

The District Attorney further stated that he did not engineer or suggest testimony to account for the fingerprint. He testified as follows:

"BY MR. GLASS:

> And do you recall asking him, or actually telling him that fingerprints were located on the door of the truck?

BY MR. CAPITELLI:

> No. The way, I positively wouldn't conduct any investigation that way. The way I do it and its (sic) been a practice of mine in every case is I ask the person first to tell me the entire story.

BY MR. GLASS:

> And since you were interested in how the fingerprints might have gotton (sic) on the door of the truck, did you question Mr. Marisco about sequence of events prior to stepping out of the truck, closely?

BY MR. CAPITELLI:

> I asked Mr. Marisco, please, tell me exactly what happened, and then I take notes and he went into detail. He went into the detail and certainly the fact that he heard the door handle move. He looked in that direction then he turned back and stepped from the truck. The man was there. That was pertinent to the trial. It was also pertinent to the fact that that door was locked and that window was locked, so obviously the robber couldn't have gotten in that door, which is the first point I felt, the way he tried to gain excess (sic) to the truck. That was part of his initial description to me after being asked that question, to give me in detail what happened in the case."

At the trial, petitioner stated numerous times under oath that he never touched the truck.

The Court finds that the prosecution's failure to honor petitioner's request to view the statement does not violate due process because the evidence was not material to guilt. There is no indication that the evidence might have affected the outcome of the trial. See *Brady v. Maryland, supra; United States v. Agurs, supra.*

The pretrial statement does not contradict the trial testimony of the robbery victim. Moreover, when viewed within the context of the full trial, the insignificance of the statement is apparent. The robbery vic-

tim identified the gun found on petitioner, the shirt worn by him and his physical appearance as being similar to the robber. Petitioner's fingerprints were lifted from the inside of the handle on the driver's side of the truck. The statement is not sufficiently material to have warranted its disclosure.

Recommendation

Accordingly, I recommend that the application for federal habeas corpus relief of ARTHUR J. MONROE be DENIED.

New Orleans, Louisiana, January 23, 1978.

/s/ KENNETH C. HUGHES
KENNETH C. HUGHES
UNITED STATES MAGISTRATE

Filed: Mar. 8, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARTHUR J. MONROE,
Petitioner,

versus CA No. 76-2631
Section C

ROSS MAGGIO, JR., Acting Warden
LOUISIANA STATE PENITENTIARY,
Respondent.

ORDER

The Court, after carefully considering the petition, the state court records and the record in this proceeding, the law applicable to the case, and the Magistrate's Report and Recommendation, hereby approves the Magistrate's Report and Recommendation and adopts it as its opinion herein.

Accordingly, the petition of ARTHUR J. MONROE for habeas corpus relief is DENIED.

New Orleans, Louisiana, this 7th day of March, 1978.

/s/ FREDERICK J. R. HEEBE
UNITED STATES DISTRICT
JUDGE

Filed: Mar. 8, 1978

Minute Entry
August 28, 1978
Heebe, J.

ARTHUR J. MONROE

versus CA No. 76-2631
Section B
ROSS MAGGIO, JR.

Filed: Aug. 28, 1978

This cause came on for hearing on a previous day on petitioner's objections to Section V of the report and recommendation of the magistrate, filed pursuant to 28 U.S.C. §636(b)(1)(C).

The Court, having heard the oral arguments of counsel, having studied the legal memoranda submitted by the parties, and having reviewed the report and recommendation of the magistrate in light of the objections thereto and the law applicable to the case, is now fully advised in the premises and ready to rule. Accordingly,

IT IS THE ORDER OF THE COURT that the report and recommendation of the magistrate to which objection was made, *viz.*, Section V, be, and the same are hereby, ACCEPTED by the Court, and that the petitioner's objections thereto, be, and the same are hereby, OVERRULED.

REASONS

Petitioner, Arthur J. Monroe, was convicted in the Criminal District Court for the Parish of Orleans of armed robbery. He was sentenced to serve twenty years, and after having exhausted his state remedies, he filed this petition for writ of habeas corpus. The petition was referred to a magistrate who thereafter submitted his report and recommendation pursuant to 28 U.S.C. §636. This Court previously approved the report and recommendation of the magistrate and adopted it as its opinion herein; but, thereafter recalled, vacated and set aside the judgment entered herein, allowing the petitioner to file his objections to the magistrate's report and recommendation.

While the magistrate had the petition under advisement, petitioner filed a supplemental petition alleging, as grounds for the writ, that the prosecution, after a specific request, refused to allow the petitioner to view a pretrial statement of the robbery victim. The petitioner contends that the statement was material to the defense of the robbery case and tended to exculpate petitioner, and that therefore, the failure to produce the statement in response to a specific request violated due process an enunciated in United States v. Agurs, 427 U.S. 97 (1976), and Brady v. Maryland, 373 U.S. 83 (1963).

Although the victim testified at trial that he heard a noise by the driver's door of the truck and noticed that

the latch was down just prior to the robbery, his pretrial statement made no mention of any noise or the latch being down. The petitioner's fingerprints were found on the inside of the door handle of the truck and, besides the victim's statement that the general description of the robber fit the petitioner, constituted the most damaging evidence against petitioner. Petitioner testified repeatedly that he had not touched any part of the truck when the police brought him alongside it shortly after his arrest.

The magistrate reviewed the testimony taken at the state court evidentiary hearing and found it to be ". . . exhaustive of evidence that could be adduced at such a hearing." (Magistrate's Report and Recommendation, p. 7).

The magistrate's findings in Section V of his report read as follow:

> "The Court finds that the prosecution's failure to honor petitioner's request to view the statement does not violate due process because the evidence was not material to guilt. There is no indication that the evidence might have affected the outcome of the trial. See *Brady v. Maryland, supra; United States v. Agurs, supra.*"

This Court agrees with the determination of the magistrate and finds that the omission in the victim's

pretrial statement of any mention of a noise or the latch being down does not tend to exculpate the petitioner of the robbery, especially in view of petitioner's repeated contestations that he had not touched the truck at any time, and the fact that the victim's trial testimony does not contradict his pretrial statement.

Under United States v. Agurs, *supra,* the test for materiality where a specific request for information was made ". . . is not necessarily the same as in a case in which no such request has been made." At 106. Also, in *Agurs,* the Supreme Court reviewed the standard to be applied in determining whether due process has been violated by prosecutorial nondisclosure.

> "But to reiterate a critical point, the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial.
>
> "The Court of Appeals appears to have assumed that the prosecutor has a constitutional obligation to disclose any information that might affect the jury's verdict. That statement of a constitutional standard of materiality approaches the 'sporting theory of justice' which the Court expressly rejected in *Brady*. For a jury's appraisal of a case 'might' be affected by an improper or trivial considera-

tion as well as by evidence giving rise to a legitimate doubt on the issue of guilt. If everything that might influence a jury must be disclosed, the only way a prosecutor could discharge his constitutional duty would be to allow complete discovery of his files as a matter of routine practice.

"Whether or not procedural rules authorizing such broad discovery might be desirable, the Constitution surely does not demand that much . . . . The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."
(pp. 108-110, footnotes omitted)

This Court finds that the pretrial statement of the robbery victim was not material in the constitutional sense, and its nondisclosure did not deprive petitioner of a fair trial. The Court disagrees with petitioner's characterization of the pretrial statement as "critical" evidence under White v. Maggio, 556 F.2d 1352 (5th Cir. 1977), the nondisclosure of which violates due process. Thus, this Court concludes that petitioner's claim must fail under both the "materiality" standard as enunciated in United States v. Agurs, *supra*, and the "critical evidence" standard set out in White v. Maggio, *supra*. The statement is not exculpatory, and had it been

produced, it would have been useful only to impeach the testimony of the robbery victim at trial.

Noting the inherent uncertainty concerning the impact of impeachment evidence, the Fifth Circuit in Garrison v. Maggio, 540 F.2d 1271 (1976), distinguished impeachment matter from material having substantial probative force on the issues at trial, stating:

> "A case such as this one, where the undisclosed evidence is useful only for impeachment, is significantly different from one like *Agurs*, where the undisclosed evidence was pertinent to the merits of a self-defense claim." At 1273-4.

Although Garrison v. Maggio, *supra*, was a non-request case and can be distinguished from the case at bar, this Court finds the distinction persuasive and applies it to these facts, where the undisclosed pretrial statement and is not *per se* exculpatory, but merely indicates, as did the report in Garrison, that the victim may have previously given a somewhat different version of the crime. In view of petitioner's repeated assertions under oath that he never touched any part of the truck, this Court finds that the pretrial statement does not raise a reasonable doubt concerning the guilt of the petitioner that did not otherwise exist.

For the above reasons, the petitioner's objections to Section V of the magistrate's report and recommenda-

tion are hereby overruled, and the Clerk of Court is directed to enter judgment in favor of the respondent, Ross Maggio, Jr., and against the petitioner, Arthur J. Monroe, dismissing the petition.

/s/ FREDERICK J. R. HEEBE

Minute Entry
February 1, 1978
Heebe, J. (For Rubin, J.)

ARTHUR J. MONROE

versus CA No. 76-2631
Section C

ROSS MAGGIO, JR.

IT IS THE ORDER OF THE COURT that the Clerk of Court, be, and he is hereby, DIRECTED TO RE-ALLOT the above action to another section of this court excluding Section C in order that it may be acted upon.

Reallotted to:
Section B

/s/ FREDERICK J. R. HEEBE

Filed: Feb. 1, 1978

APPENDIX II

Arthur J. MONROE,
Petitioner-Appellant,

versus

Frank BLACKBURN, Warden,
Louisiana State Penitentiary,
Respondent-Appellee.

No. 78-3191

United States Court of Appeals,
Fifth Circuit.

Nov. 21, 1979.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before COLEMAN, TJOFLAT and HILL, Circuit Judges.

JAMES C. HILL, Circuit Judge:

On April 26, 1974, Arthur Monroe was found guilty of armed robbery by a Louisiana jury and sentenced to

20 years imprisonment in the Louisiana State Penitentiary at Angola, Louisiana. After exhausting his state remedies[1] Monroe filed a petition for habeas corpus in the District Court for the Eastern District of Louisiana. In this appeal from the district court's denial of the petition, the sole issue presented is whether Monroe was denied due process because of the prosecutor's failure to produce at trial a statement given to the police by the victim of the robbery.

On the afternoon of March 14, 1974, Doty Marisco, a laundry route salesman, was robbed at gunpoint of his wallet and about $8.00 in change. Marisco immediately reported the robbery to the New Orleans police. Although he was not able to describe the robber's face, Marisco was able to describe the robber as black male, about 20 years old, approximately 6 feet tall, and wearing a red, white and blue plaid shirt. A few minutes later the police approached Monroe who was talking with another man some three blocks away from the scene of the robbery. Upon seeing the police, Monroe fled, but was apprehended within a short time. He had a pistol and $1.90 in change; neither the wallet nor the money taken from Marisco were ever recovered. Monroe was then taken back to the scene of the robbery. Marisco was not able positively to identify Monroe as the robber but did tell the police that Monroe's general

1 The conviction and sentence were affirmed by the Louisiana Supreme Court in *State v. Monroe*, 329 So.2d 193 (La. 1976). Petitioner's state habeas petition was denied by the same court, two justices dissenting, in *State v. Monroe*, 342 So.2d 1108 (La. 1977).

appearance, shirt and gun were similar to the robber's. Monroe's fingerprint was later lifted from the inside door handle on the driver's side of Marisco's laundry truck.

Approximately two hours after the robbery, Marisco gave the following statement to the police:

> At about 3:15 p.m., this date, I had stopped my truck in the 2300 block of South Galvez Street to make a laundry pick up at the Santa Monica School. As I started to get out of my truck, I had one foot on the ground, and I was looking down where I was stepping, when I heard a man say, "I want your money."

Brief for Appellant at 6-7.

At trial, Marisco was called as the prosecution's first witness. When asked to describe the robbery he stated:

> I was in a paneled truck with sliding doors. I was going to make a pick up at 2300 Galvez and before I got out of my truck, I was writing my ticket out, I heard a noise on my left hand door. He had the latch door.

Tr. 2-3. On cross-examination, defense counsel asked Marisco if he had ever given a statement to the police, to which Marisco answered that he had. Counsel then

requested the statement, the prosecutor objected to producing it, and the court sustained the objection.

Petitioner emphasizes that Marisco's pre-trial statement to the police did not mention "a noise" at the door. During his testimony at trial, however, Marisco stated that he did hear a noise just prior to his confrontation with the robber. This testimony, petitioner argues, was relied on by the prosecutor to establish that petitioner's fingerprint was placed on the door of the laundry truck at the time of the robbery and not at some other time.[2] Petitioner argues that Marisco's statement to the police, had it been disclosed, could have been used to cast doubt upon the reliability of the damaging testimony elicited by the prosecutor at trial. Thus, petitioner contends that the prosecutor's failure to turn over the statement denied him due process and now seeks a reversal of the District Court's denial of habeas relief. For the reasons stated below, we reverse and remand.

In *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Supreme Court set forth the general rule by which we evaluate the due process implications of a prosecutor's refusal to provide evidence that is favorable to the defense: "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence

2 At trial, Monroe testified that he did not touch the truck when he was brought to the scene by the police. Record, transcript of state trial, at 65, 66.

is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87, 83 S.Ct. at 1196. Subsequent decisions have refined and clarified the *Brady* holding, and it is now clear that in order to establish a *Brady* violation the defendant must prove three things: "(a) suppression by the prosecution after a request by the defense, (b) the evidence's favorable character for the defense, and (c) the materiality of the evidence." *Moore v. Illinois*, 408 U.S. 786, 794-95, 92 S.Ct. 2562, 2568, 33 L.Ed.2d 706 (1972); *United States v. Sink*, 586 F.2d 1041, 1051 (5th Cir. 1978); *United States v. Anderson*, 574 F.2d 1347, 1353 (5th Cir. 1978).

Since we have little difficulty in concluding that petitioner has satisfied the first two parts of the test, we turn to the third, and most important, element.

The definition of materiality, for purposes of the *Brady* doctrine, varies with the nature of the suppressed evidence and the manner in which the request, if any, is made. The Supreme Court has identified three types of cases to which *Brady* applies:

> (1) The prosecutor has not disclosed information despite a specific defense request; (2) the prosecutor has not disclosed information despite a general defense request for all exculpatory information or without any defense request at all; (3) the prosecutor knows or should know that the conviction is based on false evidence.

United States v. Anderson, 574 F.2d 1347, 1353 (5th Cir. 1978).[3]

This case falls squarely into the first category. Although the prosecutor argues otherwise, we cannot see how a defense request could be more specific than the one made in this case.[4] Accordingly, the appropriate test of materiality is whether "the suppressed

3 This court recently has held *Brady* applicable where "the prosecution fails to disclose purely impeaching evidence not concerning a substantive issue, in the absence of a specific defense request." *United States v. Anderson*, 574 F.2d 1347, 1353 (5th Cir. 1978); *see Garrison v. Maggio*, 540 F.2d 1271 (5th Cir. 1976), *cert. denied*, 431 U.S. 940, 97 S.Ct. 2655, 53 L.Ed.2d 258 (1977).

4 The following exchange took place during defense counsel's cross-examination of Marisco:

Q. Did you make a statement to the police as to what happened that day?
A. I told them exactly what happened.
Q. Did they write down everything that you told them?
A. I don't know if they wrote down everything.
Q. Did you sign a statement?
A. Yes.
Q. Did you read the statement?
A. Yes, I read it.
Q. You are testifying today basically from what you remember to have happened on that particular day, as well as what you remember reading in that statement, is that correct?

BY THE COURT:
What is the basis of your testimony? What you remember or what you read?
BY THE WITNESS:
What I remember.
EXAMINATION BY MR. McKEE:
Q. Did you refresh your memory prior to coming in court?
A. I have been thinking about the case. I am telling the truth.

evidence might have affected the outcome of the trial."[5] *United States v. Agurs*, 427 U.S. 97, 104, 96 S.Ct. 2392, 2398, 49 L.Ed.2d 342 (1976). Stated another way, the suppression of favorable evidence by the prosecutor, in the face of a specific request, cannot be ex-

Q. I am not trying to confuse you in any way, I'm merely asking a question. Did you read it prior to coming to court?
A. On the day it happened.

BY MR. McKEE:
I move to have the statement at this time.
BY MR. CAPITELLI:
I object.
BY THE COURT:
Objection sustained.
BY MR. McKEE:
The defense would like to reserve a bill of exception making a part thereof the question propounded to the witness, the question made by the defense to read the statement and present the statement in court for the purpose of reviewing said statement and make it a part of the entire record.

Record, transcript of state trial, at 7-8.

5 The lowest materiality standard is applied in the third class of cases, where the prosecutor knowingly uses false evidence or perjured testimony. In such cases, reversal is required if there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976). This is very similar to the standard applied where a specific request is made. Where only a general request or no request is made, in order to show that he was denied a fair trial, the defendant must show that "the omitted evidence creates a reasonable doubt that did not otherwise exist." *Id.* at 112, 96 S.Ct. at 2402; *United States v. Herberman*, 583 F.2d 222, 228 (5th Cir. 1978). The highest standard is applied where the prosecutor, in the absence of a specific defense request, fails to disclose "purely impeaching evidence, not concerning a substantive issue at trial." *United States v. Anderson*, 574 F.2d 1347, 1354 (5th Cir. 1978). In such cases, the defendant must "demonstrate that the undisclosed evidence probably would have resulted in an acquittal." *Id.*; *see Galtieri v. Wainwright*, 582 F.2d 348, 363 n. 29 (5th Cir. 1978) (en banc).

cused unless " 'there appears no reasonable likelihood that [the evidence] would have affected the judgment of the jury.' " *White v. Maggio*, 556 F.2d 1352, 1357 (5th Cir. 1977) (quoting *Shuler v. Wainwright*, 491 F.2d 1213 (5th Cir. 1974)).[6]

---

6 We do not think that our En Banc decision in *Galtieri v. Wainwright*, 582 F.2d 348 (5th Cir. 1978) (en banc), requires us to apply a higher standard of materiality in this case. In *Galtieri*, defense counsel made a pre-trial general request for *Brady* material. At that time the prosecutor failed to turn over grand jury testimony of a court witness who later testified at the defendant's trial. At trial, defense counsel made a specific request for a transcript of the testimony. The trial judge refused the request, with the proviso that defense counsel could inquire, on cross-examination, into the substance of the grand jury testimony. The En Banc Court applied the reasonable doubt standard of materiality which we previously stated, note 5, *supra*, is applicable where a general request or no request is made. *Id.* at 362. It appears that the Court used this higher standard because of certain factual differences between the typical *Brady* case and the one before it:

> In summary, there are a number of distinctions between this case and the *Brady* line of cases. Here, the omitted evidence was "discovered" during, not after, the trial. The trial judge, not the prosecutor, made the decision that the trial should continue without the transcript. *The relevant information contained in the omitted evidence was put forth before the jury.* The testimony at the third grand jury proceedings, as recounted by Braverman, was not clearly exculpatory.

Id. at 364 (emphasis added).

We think that the critical factor in *Galtieri*, justifying the application of a more rigorous standard of materiality, was that the evidence was made available to the jury, albeit not in the form requested by counsel. Since the question of materiality focuses on the impact that the evidence might have had if made available to defense counsel, we think that *Galtieri* does not require us to use the higher reasonable doubt standard where, as here, the trial court did not qualify his ruling so as to allow cross-examination on the substance of the witnesses' prior statement. Even if we were to apply the higher standard used in *Galtieri*, on these facts we would still hold that petitioner was denied a fair trial.

Although the question in this case is not one of sufficiency of the evidence, in deciding whether the suppressed evidence "might have affected the verdict," it is necessary for us to consider Marisco's pre-trial statement in light of the other evidence of guilt offered by the prosecutor. The transcript from the trial shows that Marisco was called as the prosecution's first witness and provided the most damaging testimony against Monroe. On two separate occasions the prosecutor questioned Marisco about the noise at the door, presumably in an attempt to show that Monroe's fingerprint got on the door handle during the course of the robbery. Marisco then identified Monroe as the one who was brought back to the scene of the robbery by the police, but, on cross-examination, he testified that he did not get a good look at the robber and was not able positively to identify Monroe as the robber when he was brought back to the scene. Record, transcript of state trial, at 8, 10. Viewing the evidence in a light most favorable to the prosecution, *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942), the balance of the case consisted of establishing that Monroe's shirt and gun were similar to the robber's and that Monroe fled when confronted by the police a few minutes after the robbery. Given the absence of other evidence connecting Monroe with the robbery and the victim's inability to identify Monroe as the robber, the fingerprint evidence became a crucial part of the prosecutor's case. Although the victim's statement to the police did not directly contradict his trial testimony, the

absence of any reference in that statement to a "noise at the door" could have been useful to the defense in attacking his in-court testimony on this crucial issue. This distinguishes the statement from that class of evidence that may properly be labelled "impeachment evidence not concerning a substantive issue." *United States v. Anderson*, 574 F.2d 1347, 1354 (5th Cir. 1978). Such evidence may be useful for the purpose of showing that the witness is, generally, not likely to be credible.[7] Marisco's statement, on the other hand, is impeachment evidence of the sort that goes directly to a substantive issue and could be used in urging that the in-court testimony has been "improved" by the erroneous addition of what the prosecution needed to support its theory. Under these circumstances, there is at least a reasonable likelihood that the suppressed evidence could have affected the verdict. Accordingly, we hold that the prosecutor's failure to turn over the statement denied petitioner a fair trial within the meaning of *Brady* and the due process clause of the fourteenth amendment. We reverse the decision of the district court and remand the case with instructions that the district court order the petitioner released from custody if the state does not retry him within a reasonable time.

REVERSED and REMANDED.

---

7 "[S]uch impeachment could concern the witness' interest, motives, prejudices, hostilities, means for obtaining knowledge, power of memory, way of life, associations, and other pertinent circumstances affecting credibility." *United States v. Anderson*, 574 F.2d 1347, 1354 (5th Cir. 1978).

COLEMAN, Circuit Judge, dissenting:

I respectfully dissent.

The presence of the fingerprint on the inside of the door handle, when the defendant disclaimed touching the truck at any time, far outweighs any possible prejudicial effect stemming from whether the prosecuting witness did or did not hear a noise before being accosted. Witnesses may be mistaken, they may deliberately lie, about their recollections of such fleeting matters as hearing a noise or overhearing a few words of a conversation. Physical facts do not lie. In this case the fingerprint was there and there is not the slightest suggestion that it might have gotten there at some other time or place and in an innocent fashion.

I would not invalidate this state conviction on constitutional grounds. Of course, we have no jurisdiction to do it on any other basis.

APPENDIX III

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
OFFICE OF THE CLERK

January 16, 1980

TO ALL PARTIES LISTED BELOW:

NO. 78-3191
ARTHUR J. MONROE v. FRANK BLACKBURN

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

/s/ SALLY HAYWARD
SALLY HAYWARD
Deputy Clerk

cc: Mr. Robert Glass
Mr. David J. Cortes
Mr. Brian G. Meissner

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
OCTOBER TERM, 19

No. 78-3191

D.C. Docket No. CA-76-2631 "B"

ARTHUR J. MONROE,
Petitioner-Appellant,

versus

FRANK BLACKBURN, Warden,
Louisiana State Penitentiary,
Respondent-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

---

Before COLEMAN, TJOFLAT and HILL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court.

November 21, 1979

Coleman, Circuit Judge, dissenting.

ISSUED AS MANDATE: JAN. 24, 1980

APPENDIX IV

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-3191

ARTHUR J. MONROE,
Petitioner-Appellant,

versus

FRANK BLACKBURN, Warden,
Louisiana State Penitentiary,
Respondent-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

---

ORDER

The motion of Respondent-Appellee for a recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including March 5, 1980, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ JAMES C. HILL
UNITED STATES
CIRCUIT JUDGE

Filed: Feb. 11, 1980

APPENDIX IV A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OFFICE OF THE CLERK

March 5, 1980

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 78-3191 Arthur J. Monroe vs. Frank Blackburn

The following action has this day been taken in the above case:

(XXX) Motion of appellee for further stay of mandate to and including March 19, 1980 granted.

GILBERT F. GANUCHEAU,
Clerk

/s/ FRED ALFORTISH
Deputy Clerk

cc: Mr. Brian G. Meissner
Mr. Robert Glass

APPENDIX V

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OFFICE OF THE CLERK

February 11, 1980

NO. 78-3191 ARTHUR J. MONROE -vs- FRANK BLACKBURN, Warden Louisiana State Penitentiary
(USDC #CA-76-2631 "B")

MANDATE RECALLED AND STAYED TO AND INCLUDING 3/5/80

Dear Counsel:

The court has this day granted the recall and stay of the mandate to the date shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay will continue until final disposition by the Supreme Court. Upon the filing of a copy of order of the Supreme Court denying the petition for writ of certiorari, the mandate will issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore, will not be routinely prepared by this office (38LW 3502).

A copy of the opinion, judgment and denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition. Enclosed are copies of the said documents which have been entered in this cause.

By copy of this letter to the clerk of the District Court, we request that he return the opinion and judgment issued as mandate on 1/24/80.

Very truly yours,

GILBERT F. GANUCHEAU,
CLERK

/s/ PEGGY KELLER
Deputy Clerk

cc: (Letter Only)
Mr. Robert Glass
Mr. Wm. J. Guste, Jr.
Mr. Nelson B. Jones

APPENDIX VI

New Orleans Police Department
Sixth Police District Station
March 14, 1974 5:00 P.M.
Item No. C-12367-74

Statement of Doty Marisco, WM, age 60, residing at 291 West Shannon Lane, Harahan, La., relative to his being the victim of an armed robbery which occurred at the 2300 block of S. Galvez St., at about 3:15 P.M., on March 14, 1974, and the subsequent arrest of Arthur J. Monroe, NM, age 19, residing at 1331 S. Derbigny St.

STATEMENT

At about 3:15 P.M., this date, I had stopped my truck in the 2300 blk. of S. Galvez St. to make a laundry pick-up at the Santa Monica School. As I started to get out of my truck, I had one foot on the ground, and I was looking down where I was stepping, when I heard a man say, 'I want your money'. I looked up and saw a young black male about 20 years old, about six feet tall, wearing a red blue and white, plaid shirt, pointing a blue steel revolver at me. The negro male told me to turn around, which I did and he then removed a plain brown cloth bag from my right rear pocket, which I keep change in, and he also removed my wallet from my left rear pocket. I did not have any money in my wallet. After he took my wallet and the cloth bag, he left, and I looked back through the rear door windows of my van and I saw him walk on S. Galvez St. to Melpomene St.

and he turned on Melpomene St. and walked toward the lake. I don't know where he went after that.

The following questions, denoted by "Q", are by Officer Roy LaFleur, and the answers, denoted by "A", are by Doty Marisco.

Q—When the officers arrived on the scene of the robbery, you gave them a general physical description and a clothing description of the person who had robbed you. The officers subsequently arrested a negro male, whom you were allowed to view after he was in custody, can you identify the subject who was in custody as the person who robbed you?

A—The clothing, and the physical appearance of the man who was arrested, is very similar to the man who robbed me, however, I cannot positively identify him as the same man.

Q—You were allowed to view the revolver which was confiscated from the subject who was arrested, can you identify this weapon as the one that was used to rob you?

A—The gun was similar, however, I cannot positively identify it as the same one.

Q—Is there anything that you wish to add to or delete from this statement?

A—Nothing.

Q—Is this statement true and correct to the best of your knowledge and made of your own free will?

A—Yes.

/s/ MR. DOTY MARISCO
Doty Marisco

This statement was typed in the Sixth Police District Station by D/Sgt. Francis Miller, in the presence of Officer Roy LaFleur, and was completed at 5:40 P.M., on 3-14-74.

R.L.

APPENDIX VII

ROBBERY CASE REPORT

LIGHTING: GOOD [X] FAIR [ ] POOR [ ] TEMP.: SPECIFY ____

1. ARMED [X] SIMPLE [ ] PURSE SNATCHING (FORCE USED) [ ] ATTEMPT [ ]	2. ITEM	3. DISTRICT	4. CAR SECTOR	5. CAR ASSIGNED	6. ZONE
	C-12367-74	Sixth	602	611	N

7. LOCATION: NUMBER STREET APT.	8. DATE-TIME OCCURRED	9. DAY OF WK. OCCURRED	10. DATE-TIME HANDLED
2300 Blk. S. Galvez St.	3-14-74 3-15PM	Thursday	3-14-74 3-20PM

11. VICTIM'S NAME	RACE	SEX	DATE OF BIRTH	12. RESIDENCE ADDRESS	13. RESIDENCE PHONE	14. BUSINESS PHONE
Marisco, Doty	W	M	11-17-13	291 West Shannon Ln. Harahan La.	737-5056	895-5765

15. PROPERTY OF: NAME (FIRM NAME IF BUSINESS)	16. RESICENCE ADDRESS	17. RESIDENCE PHONE	18. BUSINESS PHONE
Morrison Cleaners	4114 S. Claiborne Ave.		895-5765

19. WITNESS: NAME	RACE	SEX	DATE OF BIRTH	20. RESIDENCE ADDRESS	21. RESIDENCE PHONE	22. BUSINESS PHONE
None				X	X	X

23. VICTIM'S OCCUPATION	24. TYPE OF PREMISES WHERE OCCURRED	25. SOBRIETY OF VICTIM (CHECK ONE)
Route Salesman	Public Street	SOBER [X] HBD [ ] INTOXICATED [ ]

26. WEAPON OR FORCE USED	27. HOW WEAPON OR FORCE USED
32 Cal. Blue Steel Revolver	To intimidate victim and hold at bay

28. CAN OFFENDER BE IDENTIFIED BY:	29. NUMBER OF OFFENDERS
VICTIM [ ] WITNESS [ ] NO [ ] X	One

30. VICTIM HOSPITALIZED-LOCATION	31. NATURE OF INJURIES
YES [ ] NO [X]	None

32. PERSON NOTIFIED IN DETECTIVE BUREAU	TIME	33. CRIME LAB ON SCENE (NAME OF OFFICER(S))	TIME
Det. Rhett Magnum	3-30PM	Det. Daniel O'Neal Unit 3653	4PM

34. LIST STOLEN PROPERTY BY TYPE, BRAND NAME, SERIAL NUMBER, ETC.
See Continuation
(USE CONTINUATION SHEET-PROPERTY, TO DESCRIBE ITEMS STOLEN)

35. VEHICLE USED BY OFFENDER: YEAR	MAKE	MODEL	BODY STYLE	COLOR
None				

LICENSE NUMBER: X — OTHER IDENTIFYING MARKS:

36. TRADE MARK OR UNUSUAL EVENT RELATED TO OFFENSE	37. STATE ANY REASON FOR BELIEVING COMPLAINT UNFOUNDED
X	X

38A)	NAME	ADDRESS	APT.	RACE	SEX	DATE OF BIRTH	HEIGHT	WEIGHT	BUILD	COMPLX.	HAIR	EYES
WANTED [ ] ARRESTED [X]	Arthur J. Monroe	1321 S. Derbigny St.										

CHARACTERISTICS	DESCRIBE CLOTHING WORN BY WANTED
Wore a Knit Cap	

38B)	NAME	ADDRESS	APT.	RACE	SEX	DATE OF BIRTH	HEIGHT	WEIGHT	BUILD	COMPLX.	HAIR	EYES
WANTED [ ] ARRESTED [ ]	XXX											

CHARACTERISTICS	DESCRIBE CLOTHING WORN BY WANTED SUBJECT
XXXX	

39. NARRATIVE-USE CONTINUATION SHEET (PROPERTY) TO REPORT VALUES OF STOLEN PROPERTY, ETC.
See Continuation

40. DISPOSITION (CHECK ONE OR MORE)
NOT CLEARED [ ] IDENT. [ ] CLEARED BY ARREST [X] OFFENDER KILLED [ ] CONFESSION [ ] SUICIDE [ ] OTHER [ ]

41. CLEARANCE CREDIT
Sixth District

42.
UNFOUNDED [ ] NO PROPERTY RECOVERED [ ] NO LOSS OF PROPERTY [ ] PARTLY CLEARED BY RECOV. OF PROP.: ALL [ ] PART [X]

43. REPORTING OFFICER	BADGE	REPORTING OFFICER	BADGE	44. SUPERVISOR APPROVING	45. DATE OF REPORT
1/ Patr. Roy LaTour	1691				3-14-74

46. ACCESS NUMBER
(DO NOT WRITE IN THIS BLOCK)

DISTRICT ATTORNEY

CONTINUATION SHEET (PROPERTY) | NEW ORLEANS DEPARTMENT OF POLICE

1. PAGE 2 OF PAGES	2. KIND OF REPORT CONTINUED: Robbery Case	3. OFFENSE CHARGE OR INCIDENT: Armed Robbery	4. NAME OF VICTIM OR ARRESTEE: Arthur J. Monroe	5. ITEM NUMBER: C-12367-74

6. PROPERTY DESCRIPTION: (DESCRIBE PROPERTY, THEN BEGIN NARRATIVE REPORT)

LIST BY: TYPE, BRAND NAME, SERIAL NUMBER, COLOR, IDENTIFYING MARKINGS

1 Brown Cloth Money Bag containing approx. $8 in U S Coins

1 Brown Alligator Wallet containing $5 Us Currency

1 La. Chaeuffers Drivers License in name of victim valued at $10-00

Total value of loss $33-00

7. TYPE & VALUE OF PROPERTY

	STOLEN	RECOVERED
CURRENCY & NEGOTIABLES	$13-00	$1-90
JEWELRY & PRECIOUS METAL		
FURS		
CLOTHING		
MISCEL.	$20-00	
TOTAL VALUE	$33-00	$1-90

PROPERTY RECOVERED BY (CHECK ONE): OFFICERS ☒ OWNER ☐ OTHERS ☐

On 3-14-74 Officer Lafleur responded to a signal 6/G, (Armed Robbery) which was broadcasted over NOPD radio at 3-15PM from the 2300 blk. of S. Galvez St. A subsequent description of the perpetrator was dispatched, as that of a MI, approx. 20 yrs of age, wearing a plaid shirt., and a route of escape. Officer LaFleur avoided the scen of the robbery as Offs. J. Fields and L. Bourgeois responded to the scene to assist the victim. Officer LaFleur cruised the area of Erato and S. Galvez Sts. and observed a young MI subject fitting the physical and clothing description of that attributed to the wanted subject. This subject was talking to an unidentified MI at this location. Off. LaFleur approached with the police cruiser and elited from same and asked arrested subject for identification. At this point the subject began walking away from Off. LaFleur, then began running away into the Calliope St. Housing Project. Off. LaFleur immediately broadcasted this information and requested more units to the area. Off. Lafleur also gave pursuit in the police cruiser. Offs. Leon Bourgeois and John Fields responded to Officer La[illegible]leur's request for assistance and at this time entered the housing project area with the police unit and

8. REPORTING OFFICER	REPORTING OFFICER	SUPERVISOR APPROVING	9. DATE OF REPORT	10. ACCESS NUMBER
Detail Boy Lafleur #109			3-14-74	(DO NOT WRITE IN THIS BLOCK)

CONTINUATION SHEET (CASE)

NEW ORLEANS DEPARTMENT OF POLICE

PAGE 3 OF PAGES	KIND OF REPORT CONTINUED	OFFENSE - CHARGE OR INCIDENT	NAME OF VICTIM OR ARRESTEE	ITEM NO.
	Robbery Case	Armed Robbery	Arthur J. Monroe	C-12367-74

observed the subject running on Thalia St. thru the courtyard in a river direction. This subject then ran into an alleyway at 3231 Thalia St. and jumped a rear fence into the yard of 3229 Thalia St. and at this time dropped the gun as he was jumping the fence, with officers in pursuit. Officers. Ward and Cavalier manning unit 164 also were in hot pursuit, and Off. M. Cavaliere caught subject coming across the fence, held him at gun point with other officers and handcuffed him. Officers Fields and Bourgeois then returned to the rear yard of 3231 Thalia St. and retrieved the gun from where the subject had discarded same. Subject was then thoroughly searched at which time a partially burned hand rolled cigarette containing a green vegatable matter was found in the subject's pocket. This cigarette was turned over to narcotics agents Israel Fields and Melvin Howard in the Sixth District Station at 4-45PM on 3-14-74 for their examination.

Officer LaFleur learned from victim that while stopping in the 2300 blk S. Galvez to make a laundry pickup at the Santa Monica Sxhool, the wanted subject approached him and pointed a blue steel revolver at him (victim) and stated, "I want your money"x The subject then ordered victim to turn around removed a brown cloth bag from his (victim) rear right pocket which contained approx. $8 and removed victims wallet from his left rear pocket. The subject then fled on S. Galvez St. to Melpomene St. and then disappeared from the view of the victim.

~~Xxxxxxxxxx~~ $1-60 in change was removed from the arrested subject after he was searched. The subject was then advised that he was under arrest for the crime of armed robbery and advised of his constitutional rights by Off. Roy LaFleur under NOPD Form 15240. While transporting to CLU, the subject advised Officer LaFleur that he did in fact have the revovered revolver in his possession along with the partial handrolled cigarette beleived to be marijuana, however, denied the armed robbery. The victim was then allowed to view the arrested subject on the scene of the robbery immediately following his apprehension and admitted the physical and clothing description to be xx the same, however, could not "positively"

REPORTING OFFICER	BADGE	REPORTING OFFICER	BADGE	SUPERVISOR APPROVING	DATE OF REPORT
Patn. Roy LaFleur	1671				3-14-74

CONTINUATION SHEET (CASE)

NEW ORLEANS DEPARTMENT OF POLICE

PAGE 4 OF PAGES	KIND OF REPORT CONTINUED	OFFENSE - CHARGE OR INCIDENT	NAME OF VICTIM OR ARRESTEE	ITEM NO.
	Robbery Case	Armed Robbery	Arthur J. Monroe	C-12363-74

identify the subject as the perpetrator.

Mr. Marisxo was then taken to the Sixth District Station, 2500 Felicity, where he rendered a written statement regarding this crime to investigating Officer Roy La'leur.

Det. Daniel ONeal from Unit 3653, Crime Lab, arrived on scene at 4PM to conduct a search for finger prints on the Morrison Cleaners Panel Truck.

Detective Rhett Magnum from the Robbery Division arrived on scene at 3-35PM and conducted his investigation.

The following articles and coins were placed on the Sixth District Evidence Book #7, page 141.

US Coins.....$1-90

1 Navy Blue Knit type watch cap.....

1 "Mohawk" blue, red, white, black 4S shirt Long Sleeve, size 15 H 15½

1 Black plastic I.D. Holder containing various miscellaneous personal papers.....

1 Pair blue Jeans flair type, laundry mark 6/297 stapled inside right zipper.....

1-.32 Cal. S/W Revolver serial # H-78709, Model #5 along with six 32 cal long live cartridges.

The following charges were placed on Arthur J. Monroe:

RS 14 Art. 64, relative to Armed Robbery in the amount of $12-00

RS 14-266 Poss Possession of Marijuana

RS 14 Art 103 Resisting an Officer

RS 14 Art 95 Possession of a Revolver, Dangerous Weapon

REPORTING OFFICER	SERIAL NO.	PAGE	SUBMITTED FOR APPROVING	DATE OF REPORT
Patrl. Roy La'leur	1691			3-14-74

CONTINUATION SHEET (CASE) — NEW ORLEANS DEPARTMENT OF POLICE

PAGE 5 OF PAGES	KIND OF REPORT CONTINUED	OFFENSE - CHARGE OR INCIDENT	NAME OF VICTIM OR ARRESTEE	ITEM NO.
	Robbery Case	Armed Robbery	Arthur J. Monroe	C-12367-74

Attached to this report is a copy of the written statement rendered by Mr. Doty Marisco WM 60 yrd old regarding the ~~XXXXXXXXXX~~ crime.

Car 600, Capt. William Stentz on scene along with cars 610 and 620, Lt. James Howley and Sgt. Charles Jeanfreau to supervise investigation.

Office of the Honorable District Attorney to be consulted in this matter...

Bulletin Sent notifying all stations....

REPORTING OFFICER	BADGE	REPORTING OFFICER	BADGE	SUPERVISOR APPROVING	DATE OF REPORT
Patrn. Roy La'lour	1691				3-14-74

SUPPLEMENTARY REPORT

NEW ORLEANS DEPARTMENT OF POLICE

1. ORIGINAL OFFENSE OR INCIDENT: Armed Robbery	2. ITEM: C-12367-74	3. DIST/OCC: 6th
5. LOCATION OF OFFENSE OR INCIDENT: 2300 blk S. Galvez St.	6. DATE OF OFFENSE: 3-14-74	
7. VICTIM'S NAME: Marisco, Doty	8. CLASSIFICATION OF OFFENSE THIS DATE: Same	

9. IS THIS MULTIPLE CLEAR-UP – LIST ITEM NUMBERS: YES ☐ NO ☒

10. STATUS (CHECK ONE): CLEARED ☒ NOT CLEARED ☐ UNFOUNDED ☐

11. CLEARANCE CREDIT: Sixth

12. IF CLEARED, CHECK HOW CLEARED: ARREST ☒ COMP. REFUSES TO PROSECUTE ☐ SUICIDE OF OFFENDER ☐ DEATH OF OFFENDER ☐ CONFESSION ☐ CLEARED BY IDENTIFICATION ☐ PROSECUTED OUTSIDE JURISDICATION ☐

4. IF PROPERTY IS INVOLVED SHOW TYPE AND VALUE

TYPE AND VALUE	STOLEN	RECOVERED
CURRENCY & NEGOTIABLES	$	$
JEWELRY & PRECIOUS METAL	$	$
FURS	$	$
CLOTHING	$	$
MISCELLANEOUS	$	$
TOTAL VALUE	$	$

13. NARRATIVE

* Subject Arthur Monroe,NM, 1321 S. Derbingy St. was arrested at time of offense by Officer Roy LaFleur.

At time of offense , Crime Lab Tech Daniel O'Niel was summoned to the scene to obtain fingerprints, if possible, from the vehicle in which the victim was riding at the time of the armed robbery. Tech . O'Niel took several samples from the vehicle' front door to be checked at the crime lab office.

On Tuesday, March 19,1974 at 3:00PM, Officers Ronald Roth and John Isbell, Car 625, was given a interoffice correspond.nc from the Crime Lab, Tech. Daniel O'Niel, by Capt. Wm. Stentz, and asked that a followup investigation be conducted of the findings.

Upon reviewing the report submitted by Tech. O'Neil, it shows that the fingerprints samples and samples taken from the subject Arthur Monroe at the time of his booking at the central lockup matched, indicating that he was on the scene at the time of the robbery, that he did handled the door of the vehicle, proving that he is in fact the subject who robbed Doty Marisco, Morrison truck driver, on Thursday, March 14,1974 at 2300 blk of S. Galvez St.

District Attorney to be ~~reinterviewed~~ consulted.

14. UNIT REPORTING	15. REPORTING OFFICER / BADGE	REPORTING OFFICER / BADGE	SUPERVISOR APPROVING	16. DATE OF REPORT
6th	Patr. Ronald Roth 1428	Patr. John Isbell 16 04		3-17-74

DISTRICT ATTORNEY

DEPARTMENT OF POLICE

INTEROFFICE CORRESPONDENCE

TO :COMMANDERS: Detective Bureau Patrol Bureau DATE: March 14, 1974

FROM :Crime Laboratory, Latent Print Section

SUBJECT: Identification of Latent Prints

On March 14, 1974, Officer Daniel O'Neil retrieved/~~received~~ latent prints under Item No.: C-12367-74 from 2300 S. Galvez relative to an investigation of a Signal 64G, at the request of Officers assigned to Car ~~___~~ 611.

Names of suspects furnished Crime Laboratory by Officers P.C.Roy Lafleaur car 611 on _____

On March 14, 1974 identification was made by Officer Daniel O'Neil relative to above latent prints and they were identified as those of Arthur Monroe C/M 3-30-54.

Above mentioned prints found on:

1. Inside left door handle of laundry truck - La. Lic # 105-148.
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

This identification is suitable, ~~is not suitable~~ for court purposes.

S-1

Lt. Guy Lartigue, Supervisor
Latent Print Section

by Daniel O'Neil

cc: 2 Detective Bur.
2 Patrol Bur.
1 Lab. file

48a